

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT H. SCHEER

Appeal No. 2006-2190
Application No. 09/867,068
Technology Center 3600

ON BRIEF

Decided: November 15, 2006

Before FRANKFORT, HORNER, and FETTING, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 through 15, which are all of the claims pending in this application.

We AFFIRM and DENOMINATE THE REJECTION AS A NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b).

BACKGROUND

The appellant's invention relates to a supply chain transaction network. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A supply chain transaction network, comprising:

a customer maintenance system into which a work order is entered including information that identifies a piece of equipment to be repaired and one or more items expected to be used during a repair procedure;

a customer agent server in communication with the customer maintenance system which extracts from the work order in the customer maintenance system the information that identifies at least the items expected to be used during the repair procedure to create an advance demand notice order for the items; and

distributor system in communication with the customer agent server which responds to a receipt of the advance demand notice order that was created using the information extracted from the work order to initiate a staging of the items within a supply chain to meet an expected use of the items during the repair procedure.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Roddy	US 2003/0055666 A1	March 20, 2003 (December 13, 2000)
Yang	US 2001/0034673 A1	October 25, 2001 (February 22, 2000)

REJECTION

Claims 1 through 15 stand rejected under 35 U.S.C. § 103(a) as obvious over Roddy in view of Yang.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the examiner's answer (mailed February 6, 2006) for the reasoning in support of the rejection, and to the appellant's brief (filed December 8, 2005) and reply brief (filed March 20, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1 through 15 rejected under 35 U.S.C. § 103(a) as obvious over Roddy in view of Yang.

We note that the appellant argues these claims as a group. Accordingly, we select claim 1 as representative of the group.

As to claim 1, the examiner has applied Roddy to all of the claim limitations without relying on Yang, although the examiner characterized the rejection of claim 1 as being unpatentable over the combination of Roddy in view of Yang. The appellant recognized that the examiner did not rely on Yang in applying the art to claim 1 and did not address Yang in the brief (Br. at p. 6).

The appellant argues that Roddy fails to describe creating an advance demand notice order that identifies the items (Br. at p. 7) or initiating a staging of the items within a supply chain to meet an expected use of the items during the repair procedure (Br. at p. 8).

The examiner responds that Roddy teaches both of these elements at paragraph 115, within a portion describing what Roddy's system may include, and which specifically calls out "Scheduling maintenance and/or Pre-ordering needed parts for remediation and improvement" (Answer at p. 24). The appellant responds to this by stating that this "simply cannot be said to

expressly disclose or inherently disclose those specific elements that are set forth in the claims...” (Reply Br. at p. 5).

We note that, to further support the argument, the examiner pointed to numerous portions of Roddy describing extraction of information from a work order (Answer at p. 21), to which the appellant stated that such extraction was notoriously well known, but in itself neither created an advance demand notice nor staged the items (Br. at p. 7).

In analyzing the arguments, we initially note that the specification provides no lexicographic definition of an advance demand notice. It does indicate that an advance demand notice is for products that may be required for a particular maintenance task, and that it may be created manually (Specification at p. 9). We further note that Roddy’s teaching of scheduling maintenance suggests creation of a work order, and pre-ordering needed parts suggests creating a notice to the vendor of the demand for the needed parts in advance of the repair, and that the very act of ordering inherently culminates in fulfillment of the order, which may be considered staging. However, we find that Yang presents much more persuasive evidence of these claim limitations.

In particular, Yang describes a scheduling function that performs these limitations.

Scheduling function 100 is preferably also responsible for *coordinating with the service request any service parts necessary in connection with the service request*, based on available service parts supply reflected in the inventory plan received from planning function 86. As an example, the scheduling function 100 may *ensure that all necessary service parts are available at the customer site on or before the promised service date*. Accordingly, the promise is preferably generated based on the availability of necessary service parts in addition to the availability of suitable support personnel. (emphasis added)

(Para. 0041).

We note that the activity of coordinating with a service request any necessary service parts creates a notification of demand in advance of the repair, and may thus be characterized as an advance demand notice, and that ensuring all parts necessary are available at a site prior to the date needed is a staging of parts for such use.

Thus, the subject matter set forth in claim 1 is described by the combination of Roddy and Yang. We note that Yang provides the motivation to apply its teachings to Roddy at paragraph 0006, such motivation being the need to improve inventory planning and management techniques to the supply chains of repair facilities such as that in Roddy.

Therefore, we find the appellant's arguments to be unpersuasive. Accordingly, we sustain the examiner's rejection of claims 1 through 15 rejected under 35 U.S.C. § 103(a) as obvious over Roddy in view of Yang.

DENOMINATION AS NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b)

As we noted above, the examiner has applied Roddy to all of the claim limitations without relying on Yang, even though claim 1 is rejected over the combination of Roddy in view of Yang. The appellant recognized that the examiner did not rely on Yang in applying the art to claim 1 and did not address Yang in the brief. We have relied upon the teachings of Yang to sustain the examiner's rejection, to which the appellant has not had an opportunity to respond. Accordingly, we denominate this rejection as a new ground of rejection under 37 C.F.R.

§ 41.50(b).

CONCLUSION

To summarize,

- The rejection of claims 1 through 15 rejected under 35 U.S.C. § 103(a) as obvious over Roddy in view of Yang is sustained.
- The rejection of claims 1 through 15 rejected under 35 U.S.C. § 103(a) as obvious over Roddy in view of Yang is further denominated as a new ground of rejection under 37 C.F.R. § 41.50(b).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

Appeal Number: 2006-2190
Application Number: 09/867,068

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner
- (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

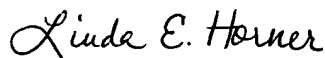
No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

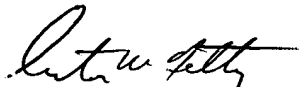
NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b)



CHARLES E. FRANKFORT
Administrative Patent Judge



LINDA E. HORNER
Administrative Patent Judge



ANTON W. FETTING
Administrative Patent Judge

)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)
)

AWF/vsh

Appeal Number: 2006-2190
Application Number: 09/867,068

GREENBERG TRAURIG, LLP
77 WEST WACKER DRIVE
SUITE 2500
CHICAGO IL 60601-1732